

LFC Requester:**Scott Sanchez**

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

SECTION I: GENERAL INFORMATION*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}**Check all that apply:*

Original X **Amendment** _____
Correction _____ **Substitute** _____

Date Prepared: 1/18/2024 **Bill No:** SB39 **Sponsor:** Bill B. O'Neil, Antonio
Maestas and Gail Chasey **Agency Name and Code Number:** 305 – New Mexico
Department of Justice **Short Title:** LIMIT
INCARCERATION FOR
TECHNICAL
VIOLATIONS **Person Writing Analysis:** Walter Hart **Phone:** 505-537-7676 **Email:** legisfir@nmag.gov **SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator's request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

Somewhat similar legislation to SB39 appears to have been passed in the 2023 Regular Session, originating as SB84, but was vetoed.

SB39 amends NMSA 1978, § 31-20-5, § 31-21-5, § 31-21-14, and § 31-21-15 with the purpose of specifying the authority and absence of authority of district courts, the parole board, and the director of the adult probation and parole division of the corrections department, in addressing probation and parole violations based on classification either as a “standard violation” or as a “technical violation.”

These two classifications specify the available authority for (a) the imposition of sanctions for a violation; and (b) the procedures for bringing an alleged violator into custody and/or before the district court or the parole board for consideration of the alleged violation. In some circumstances, a warrant may be utilized with respect to a technical violation if there is a determination by the district court or the director that the probationer or parolee is a “flight risk” or “danger to the community.”

A standard condition is limited to (1) prohibited contact with a victim or witness, (2) absconding, or (3) “a new crime not constituting a technical violation,” unless (4) the probationer or parolee is a sex offender or serious violent offender and the district court has declared a condition to be a standard condition based on a finding by “clear and convincing evidence” that such is “necessary to ensure public safety or the safety of a particular individual.”

The amended version of Section 31-21-5(A) proposes to add a definition for “absconding.” As noted above, absconding constitutes a violation of a “standard condition.”

In broad overview, if the alleged violation is a “technical violation” (which is any alleged violation that does not qualify as a “standard violation”) no warrant may be issued for the arrest of the alleged violator and the alleged violator may only be called before the district court or the parole board by issuance of a notice to appear served personally upon the alleged violator.

Further, if the alleged violation is a “standard violation” the district court and the parole board appear to have discretion to act in accordance with the broad authority allowed under existing law. However, if the only violations fall within the “technical violation” category, the amendments limit the authority of the district court and parole board to impose sanctions depending upon whether first, second, third, fourth, or subsequent technical violations are established. The amendments do not specify that multiple technical violations must be established to have occurred at different times or that they be established in different proceedings. Thus, it appears that if a district court or the parole board determines in a single

proceeding that four or more technical violations have been established (e.g., failure to pay the chemical analysis fee, failure to reimburse the New Mexico Crime Victim Commission, failure to pay the DNA fee, and failure to pay a Domestic Violence Treatment Fee), the district court and the parole board would appear to have discretion to act in accordance with the broad authority allowed under existing law.

FISCAL IMPLICATIONS

None.

SIGNIFICANT ISSUES

The inherent judicial power of district courts may include the authority to compel a probationer – a party to the criminal proceeding - to attend a probation revocation hearing regarding a technical violation, which might include the issuance of a bench warrant, even though the amendments do not extend such authority. *Consider In re Jade G.*, 2001-NMCA-058, ¶ 27. An order of probation issued by a district court is definitionally an “order.” Courts have inherent judicial authority to compel obedience to their orders. *See e.g., Concha v. Sanchez*, 2011-NMSC-031, ¶¶ 21, 25. To determine compliance and to compel obedience to a probation order, a district court may have inherent authority to issue a bench warrant for the probationer’s attendance at a probation sanction hearing.

While an arrest warrant is authorized for alleged violation of a standard condition, a district court may “issue” or the director may “authorize” an arrest warrant based on an alleged technical violation if “based on a flight risk or danger to the community.” But the proposed legislation does not provide how these findings are to be demonstrated or established, and does not provide how, when, or if these findings may be reviewed. Nor is there any provision for review of these findings when the director issues a written statement for the warrantless arrest of a parolee pursuant to Section 31-21-14(B).

A typical probation order contains conditions covering a wide range of requirements ranging from compliance with state laws, reporting to supervisory personnel, association with persons having a criminal record, electronic monitoring, permitting access to home or place of employment, warrantless search of person, home, automobile, or property, employment and fulfillment of financial obligations, possession of deadly weapons, contact with drugs, reporting of contact with law enforcement, not acting as an informant without permission, payment of probation costs, photographing and fingerprinting, contact with alcohol and establishments where alcohol is consumed, payment of fees for chemical analysis, payment to the Crime Victim Commission, payment of a DNA fee, payment of a Domestic Violence Treatment Fee, successful completion of counselling or treatment, participation in a life skills class ... as well as other potential conditions. Some of these may constitute a “standard violation” under the amendments, but many may not, and it may be considered whether those that fall within the “technical violation” category, or some combination of technical violations qualify as a “standard violation.”

District Court Rule 5-805(C), NMRA, last amended in 2011, contains provisions for adoption of local judicial district rules approved by the Supreme Court for establishment of “a program for sanctions for probationers who agree to automatic sanctions for a technical violation of the conditions of probation.” This Rule defines a “technical violation” as “any violation that does not involve new criminal charges.” If SB39 becomes law, local rules adopted pursuant to Rule 5-805(C) would likely be in conflict and rendered ineffective.

It is unclear, with the change in language from “criminal charge” to “new crime,” how Probation and Parole will judge a violation. A “new crime” seems to imply that the person would have a new conviction, rather than a new charge, which would be a significant change.

PERFORMANCE IMPLICATIONS

None.

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relationship: HB116 HUMAN TRAFFICKING & SEXUAL EXPLOITATION CRIME

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

Section 31-21-5(J)(4) is confusing and it’s unclear if the proposed “standard conditions” are meant to replace the conditions outlined in Section 31-20-5.2(C)(1)-(5) or if they are in addition to those listed.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS

N/A